

AMERICAN GREAT LAKES VESSELS¹

SEC. 1521. EXEMPTION OF AMERICAN GREAT LAKES VESSELS FROM RESTRICTIONS ON CARRIAGE OF PREFERENCE CARGOES (46 App. U.S.C. 1241q (1999)).

(a) **Exemption from Restriction.** The restriction described in subsection (b) shall not apply to an American Great Lakes vessel while it is so designated.

(b) **Restriction Described.** The restriction referred to in subsection (a) is the restriction in section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)), that a vessel that is—

- (1) built outside the United States;
- (2) rebuilt outside the United States; or
- (3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) **Subsequent Application of Restriction.** Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) shall apply as if the vessel had never been a vessel documented under the laws of the United States.

SEC. 1522. DESIGNATION OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241r (1999)).

(a) **In General.** The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of this subtitle if—

- (1) the vessel is documented under the laws of the United States;
- (2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d);
- (3) the owner of the vessel enters into an agreement in accordance with subsection (b);
- (4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and

¹ Sections 1521 through 1527 are set forth in Subtitle B of Title XV of Public Law 101-624, approved November 28, 1990 (194 STAT. 3665-3668).

(5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) **Construction and Purchase Agreement.** As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120 day period following the date of any revocation of such designation under section 1524, an exclusive right to purchase the vessel for a price equal to—

- (1) the approximate world market value of the vessel; or
- (2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel; whichever is greater.

(c) **Certain Foreign Registry and Sale Not Prohibited.** Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b), the owner of the vessel shall not be prohibited from—

- (1) transferring the vessel to a foreign registry; or
- (2) selling the vessel to a person who is not a citizen of the United States.

(d) **Issuance of Regulations.** Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations establishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

SEC. 1523. RESTRICTIONS ON OPERATIONS OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241s (1999)).

(a) **In General.** Subject to subsection (b), an American Great Lakes vessel shall not be used—

- (1) to engage in trade—
 - (A) from a port in the United States that is not located on the Great Lakes; or
 - (B) between ports in the United States;
- (2) to carry bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702(4)) which is subject to section 901(b) or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) or 1241f), or section 2631 of title 10, United States Code; or
- (3) to provide any service other than ocean freight service—
 - (A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

(b) Off-Season Carriage Exception.

(1) *In General.* Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade otherwise prohibited by subsection (a)(1)(A) for not more than 90 days during any 12-month period.

(2) *Limitation.* An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

SEC. 1524. REVOCATION AND TERMINATION OF DESIGNATION (46 App. U.S.C. 1241t (1999)).

(a) **Revocation.** The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1522 as an American Great Lakes vessel if the Secretary determines that—

- (1) the vessel does not meet a requirement for such designation;
- (2) the vessel has been operated in violation of this subtitle; or
- (3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1522(b).

(b) **Civil Penalty.** The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than \$1,000,000 against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a).

(c) **Termination of Designation.** The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under this subtitle upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

SEC. 1525. ALLOCATION BASED ON LOWEST LANDED COST (46 App. U.S.C. 1241f(c) (1999)).²

SEC. 1526. STUDY AND REPORT. (46 App. U.S.C. 1241u (1999)).

(a) **Study.** The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of this subtitle. The study shall include analysis of—

² Section 1525 amended the Food Security Act of 1985, and does not directly pertain to American Great Lakes vessels. It is codified at Section 901b(c)(3) of the Merchant Marine Act, 1936, at page ???, *supra*.

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.); and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) **Report.** Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a).

SEC. 1527. DEFINITIONS (46 App. U.S.C. 1241v (1999)).

As used in this subtitle—

(1) *American Great Lakes Vessel.* The term “American Great Lakes vessel” means a vessel which is so designated by the Secretary in accordance with section 1522.

(2) *Great Lakes.* The term “Great Lakes” means Lake Superior; Lake Michigan; Lake Huron; Lake Erie; Lake Ontario; the Saint Lawrence River west of Saint Regis, New York; and their connecting and tributary waters.

(3) *Great Lakes Shipping Season.* The term “Great Lakes shipping season” means the period of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) *Secretary.* The term “Secretary” means the Secretary of Transportation.

DOCUMENTATION OF VESSELS

46 U.S.C. 12101 (1999). DEFINITION AND RELATED TERMS IN OTHER LAWS.

(a) In this chapter—

(1) “fisheries” includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

(2) “rebuilt” has the same meaning as in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) When used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel—

(1) “certificate of registry”, “register”, and “registry” mean a registry endorsement as provided in section 12105 of this title.

(2) “license”, “enrollment and license”, “license for the coastwise (or coasting) trade”, and “enrollment and license for the coastwise (or coasting) trade” mean a coastwise endorsement as provided in section 12106 of this title.

(4) “yacht” means a recreational vessel even if not documented.

46 U.S.C. 12102 (1999). VESSELS ELIGIBLE FOR DOCUMENTATION.

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by—

(1) an individual who is a citizen of the United States;¹

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman

¹ Note that 46 U.S.C. 12106(d)(2) provides: “(2) For purpose of ...section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.” See also 46 U.S.C. 12106(e)(4) providing: “(4) For purposes of section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.”

of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

(c)(1) A vessel owned by a corporation is not eligible for a fishery endorsement under section 12108 of this title unless the controlling interest (as measured by a majority of voting shares in that corporation) is owned by individuals who are citizens of the United States. However, if the corporation is owned in whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.

(2) The Secretary shall apply the restrictions on controlling interest in section 2(b) of the Shipping Act, 1916 (46 App. U.S.C. 802(b)) when applying this subsection.

* * * * *

Effective October 1, 2001, 46 U.S.C. 12102(c) has been amended to read as follows.

(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms “control” or “controlled”—

(A) shall include—

(i) the right to direct the business of the entity which owns the vessel;

(ii) the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity which owns the vessel; or

(iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

(B) shall not include the right to simply participate in the activities under subparagraph (A), or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.

(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as a fishing vessel shall be invalid immediately upon such use.

(4)(A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

(i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(ii) is authorized under those laws to exercise corporate trust powers;

(iii) is subject to supervision or examination by an official of the United States Government or a State;

(iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(v) meets any other requirements prescribed by the Secretary.

(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.

(5) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under

the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

(6)² A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless—

(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority.³

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(d)(1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply

² Section 3027(c) of Public Law 106-31, approved May 21, 1999 (113 STAT. 57, 102), the 1999 Emergency Supplemental Appropriations Act, provides: "(c) The limitation on registered length contained in section 12102(c)(6) of title 46, United States Code, shall not apply to a vessel used solely in any menhaden fishery which is located in the Gulf of Mexico or along the Atlantic coast south of the area under the authority of the New England Fishery Management Council for so long as such vessel is used in such fishery."

³ Subsection (c) was amended by section 202(a) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681, 2681-617), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Section 203 of Public Law 105-277 provides: "The amendments made by section 202 shall take effect on October 1, 2001." Section 213(g) of Public Law 105-277, provides: "(g) International Agreements. In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date."

to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

(2)(A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if—

- (i) each of the trustees is a citizen of the United States; and
- (ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.⁴

⁴ Section 1136(c) of Public Law 104-326, approved October 19, 1996 (110 STAT. 3987) provides: “(c) **Trust Charterers.**—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) If—(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and (2)(A) the vessel—(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or (ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such vessel; or (B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.”

46 U.S.C. 12103 (1999). CERTIFICATES OF DOCUMENTATION.

(a) Except as provided in section 12123 of this title, on application by the owner of a vessel eligible for documentation, the Secretary of Transportation shall issue a certificate of documentation endorsed with one or more of the endorsements specified in sections 12105-12109 of this title.

(b)(1) The Secretary may prescribe the form of, the manner of filing, and the information to be contained in, applications for certificates of documentation.

(2) The Secretary shall require each person applying to document a vessel to provide—

(A) the person's social security number; or

(B) for a person other than an individual—

(i) the person's taxpayer identification number; or

(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessels.

(c) Each certificate of documentation shall—

(1) identify and describe the vessel;

(2) identify the owner of the vessel; and

(3) contain additional information prescribed by the Secretary.

(d) The Secretary shall prescribe procedures to ensure, the integrity of, and the accuracy of information contained in, certificates of documentation.

(e) The owner and master of a documented vessel shall make the vessel's certificate of documentation available for examination as the law or Secretary may require.

46 U.S.C. 12104 (1999). EFFECT OF DOCUMENTATION.

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceeding conducted under the laws of the United States;

(2) except for a recreational endorsement, conclusive evidence of qualification to be employed in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

46 U.S.C. 12105 (1999). REGISTRY ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a registry endorsement.

(b) A vessel for which a registry endorsement is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

46 U.S.C. 12106 (1999). COASTWISE ENDORSEMENTS.⁵

(a) A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that—

- (1) is eligible for documentation;
- (2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under laws of the United States to be employed in the coastwise trade.

(b) Subject to the laws of the United States regulating the coastwise trade, only a vessel for which a certificate of documentation with a coastwise endorsement is issued may be employed in the coastwise trade.

(c) A coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands may be issued for a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the coastwise trade.

⁵ Section 1113(f) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3971) provides: “(f) **Study of Report.**—(1) **Study.**—The Secretary of Transportation shall conduct a study of the methods for leasing, demise chartering, and financing of vessels operating in the coastal trades of other countries and whether of laws of other countries provide reciprocity for United States banks, leasing companies, or other financial institutions with respect to the rights granted under the amendment made by subsection (d). The study shall develop recommendations whether additional laws requiring reciprocity should be considered for non-United States banks, leasing companies, or other financial institutions. (2) **Report.**—The Secretary shall submit to the Congress a report 1 year after the date of this Act of the results of the study required under paragraph (1), including recommendations developed in the study.”

(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative;

(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

(D) use of the vessel is restricted to—

(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

(ii) for training exercises to prepare to respond to such a discharge.

(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions;

(C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

46 U.S.C. 12108 (1999). FISHERIES ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a fishery endorsement for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14);

(3) if rebuilt, was rebuilt in the United States; and

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a certificate of documentation with a fishery endorsement is issued may be employed in the fisheries.

(c) A fishery endorsement to engage in fishing in the territorial sea and fishery conservation zone adjacent to Guam, American Samoa, and the Northern Mariana Islands may be issued to a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built or rebuilt in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(d) A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson Fishery Conservation Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

46 U.S.C. 12109 (1999). RECREATIONAL ENDORSEMENTS.

(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.

(b) A documented vessel with a recreational endorsement may proceed between a port of the United States and a port of a foreign country

without entering or clearing with the Customs Service. A recreational vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons on board that recreational vessel shall be subject to all applicable customs regulations.

(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure.

46 U.S.C. 12110 (1999). LIMITATIONS ON OPERATIONS AUTHORIZED BY CERTIFICATES.

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) A vessel with only a recreational endorsement may not be operated other than for pleasure.

(d) A documented vessel, other than a vessel with only a recreational endorsement, may be placed under the command only of a citizen of the United States.

46 U.S.C. 12111 (1999). SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION.

(a) A certificate of documentation is invalid if the vessel for which it is issued—

(1) no longer meets the requirements of this chapter and regulations prescribed under this chapter applicable to that certificate of documentation; or

(2) is placed under the command of a person not a citizen of the United States in violation of section 12110(d) of this title.

(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

(B) sections 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

46 U.S.C. 12112 (1999). VESSELS PROCURED OUTSIDE THE UNITED STATES.

(a) The Secretary of Transportation and the Secretary of State, acting jointly, may provide for the issuance of a certificate of documentation with an appropriate endorsement for a vessel procured outside the United States meeting the ownership requirements of section 12102 of this title.

(b) Subject to limitations the Secretary of Transportation may prescribe, a vessel for which a document is issued under this section may proceed to the United States and engage en route in the foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. On the vessel's arrival in the United States, the document shall be surrendered as provided by regulations prescribed by the Secretary.

(c) A vessel for which a document is issued under this section is subject to the jurisdiction and laws of the United States. However, the Secretary of Transportation may suspend for a period of not more than 6 months, the application of a vessel inspection law carried out by the Secretary or regulations prescribed under that law if the Secretary considers the suspension to be in the public interest.

46 U.S.C. 12117 (1999). RECORDING OF UNITED STATES BUILT VESSELS. The Secretary of Transportation may provide for the recording and certifying of information about vessels built in the United States that the Secretary considers to be in the public interest.

46 U.S.C. 12119 (1999). LIST OF DOCUMENTED VESSELS.

The Secretary of Transportation shall publish periodically a list of all documented vessels and information about those vessels that the Secretary considers pertinent or useful. The list shall contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

46 U.S.C. 12120 (1999). REPORTS. To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation

may require owners and masters of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

46 U.S.C. 12122 (1999). PENALTIES.

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than \$10,000. Each day of continuing violation is a separate violation.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government-

(1) when the owner of a vessel or the representative or agent of the owner knowingly falsifies or conceals a material fact, or knowingly makes a false statement or representation about the documentation or when applying for documentation of the vessel;

(2) when a certificate of documentation is knowingly and fraudulently used for a vessel;

(3) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;

(4) when a vessel is employed in a trade without an appropriate trade endorsement;

(5) when a documented vessel with only a recreational endorsement is operated other than for pleasure; or

(6) when a documented vessel, other than a vessel with only a recreational endorsement, is placed under the command of a person not a citizen of the United States.

(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to \$100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation, with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.⁶

⁶ Added by section 203(f) of Public Law 105-277, approved October 21, 1996 (112 STAT. 2681, 2681-620), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

46 U.S.C. 12123⁷ (1999). DENIAL AND REVOCATION OF ENDORSEMENTS. When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.

46 U.S.C. 12124 (1999). SURRENDER OF TITLE AND NUMBER.

(a) A documented vessel shall not be titled by a State or required to display numbers under chapter 123, and any certificate of title issued by a State for a documented vessel shall be surrendered in accordance with regulations prescribed by the Secretary of Transportation.

(b) The Secretary may approve the surrender under subsection (a) of a certificate of title for a vessel covered by a preferred mortgage under section 31322(d) of this title only if the mortgagee consents.⁸

⁷ Prior to the enactment of Public Law 104-324, there were two sections 12123.

The first, added by section 348(a) of Public Law 102-388, approved October 6, 1992 (106 STAT. 1554), provided: “**46 U.S.C. 12123 (1996). DENIAL AND REVOCATION OF ENDORSEMENTS.** The Secretary of Transportation is authorized to deny the issuance or renewal of a trade or recreational endorsement on a certificate of documentation issued under this chapter and to revoke such endorsement if that vessel’s owner has not paid an assessment of a civil penalty after final agency action for a violation of law for which an assessment has been made by the Secretary.”

The Second, added by section 5213(a)(3) of Public Law 102-587, approved November 4, 1992 (106 STAT. 5077), provided: “**46 U.S.C. 12123 (1996). DENIAL AND REVOCATION OF ENDORSEMENTS.** When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.”

Section 746(a) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3342) provides in part: “(a) Title 46, United States Code, is amended— (1) by striking the first section 12123 in chapter 121; (2) by striking the first item relating to section 12123 in the table of sections of such chapter 121.”

⁸ Added by section 401(a)(2) of Public Law 105-383, approved November 13, 1998 (105 STAT. 3411, 3424), the Coast Guard Authorization Act of 1998.

MANNING OF VESSELS

46 U.S.C. 8101 (1999). COMPLEMENT OF INSPECTED VESSELS.

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on—

(1) a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel;

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit; and

(3) a tank vessel shall consider the navigation, cargo handling, and maintenance functions of that vessel for protection of life, property, and the environment.

(b) The Secretary may modify the complement, by endorsement on the certificate, for reasons of changed conditions or employment.

(c) A requirement made under this section by an authorized official may be appealed to the Secretary under prescribed regulations.

(d) A vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.

(e) When a vessel is deprived of the service of a member of its complement without the consent, fault, or collusion of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel, the master shall engage, if obtainable, a number of members equal to the number of those of whose services the master has been deprived. The replacements must be of the same or a higher grade or rating than those whose places they fill. If the master finds the vessel is sufficiently manned for the voyage, and replacements are not available to fill all the vacancies, the vessel may proceed on its voyage. Within 12 hours after the vessel arrives at its destination, the master shall report in writing to the Secretary the cause of each deficiency in the complement. A master failing to make the report is liable to the United States Government for a civil penalty of \$1,000 for each deficiency.

(f) The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of \$10,000.

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel

to which this part applies or which is subject to inspection under chapter 33 of this title if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than \$10,000. Each day of a continuing violation is a separate offense.

(h) The owner, charterer, or managing operator of a freight vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, a small passenger vessel, or a sailing school vessel not manned as required by this section is liable to the Government for a civil penalty of \$1,000. The vessel also is liable in rem for the penalty.

(i) When the 2 next most senior licensed officers on a vessel reasonably believe that the master or individual in charge of the vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel, the next most senior master, mate, or operator licensed under section 7101(c)(1) or (3) of this title shall—

- (1) temporarily relieve the master or individual in charge;
- (2) temporarily take command of the vessel;
- (3) in the case of a vessel required to have a log under chapter 113 of this title, immediately enter the details of the incident in the log; and
- (4) report those details to the Secretary—
 - (A) by the most expeditious means available; and
 - (B) in written form transmitted within 12 hours after the vessel arrives at its next port.

46 U.S.C. 8102 (1999)). WATCHMEN.

(a) The owner, charterer, or managing operator of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of a fire or other danger. An owner, charterer, or managing operator failing to provide watchmen required by this section is liable to the United States Government for a civil penalty of \$1,000.

(b) The owner, charterer, managing operator, agent, master, or individual in charge of a fish processing vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall keep a suitable number of watchmen trained in firefighting on board when hot work is being done to guard against and give alarm in case of a fire.

46 U.S.C. 8103 (1999). CITIZENSHIP AND NAVAL RESERVE REQUIREMENTS.

(a) Only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel—

(A) each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence; and

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(2) Paragraph (1) of this subsection does not apply to—

(A) a yacht;

(B) a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)); and

(C) a fishing vessel fishing outside of the exclusive economic zone.

(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—

(A) an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(B) a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the Outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

(c) On each departure of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure of a passenger vessel for which a construction or operating differential subsidy has been granted, at least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master and the radio officer) when on a foreign voyage and a vacancy consequently occurs, until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$500 for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Naval Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is

permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)).

46 U.S.C. 8104 (1999). WATCHES.

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as pre-

scribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of \$10,000.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of \$10,000. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(l) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel—

(1) entered into service before January 1, 1988, and is more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel—

(1) entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, “work” includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(o)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed

individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

(A) before September 8, 1990, operated in that trade; or

(B)(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

CROSS BORDER FINANCING

Section 1136 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3986), the Coast Guard Authorization Act of 1996, provides as follows:

SEC. 1136. CROSS-BOARDER FINANCING.

(a) **DOCUMENTATION OF VESSELS OWNED BY TRUSTS.**—Section 12102 of title 46, United States Code, is amended by adding at the end the following new subsection:

“(d) (1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

“(2)(A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if—

“(i) each of the trustees is a citizen of the United States, and

“(ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

“(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

“(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

“(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States

under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.”

(b) APPROVAL OF CERTAIN VESSEL TRANSACTIONS BEFORE DOCUMENTATION OF THE VESSEL.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) is amended by adding at the end the following new subsection

“(e) To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code, the Secretary may grant approval under subsection (c) before the date the vessel is documented.”.

(c) TRUST CHARTERERS.—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if—

(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and

(2)(A) the vessel—

(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or

(ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such a vessel; or

(B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

(d) INDIRECT VESSEL OWNERS.—Notwithstanding any other provision of law, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 the following vessels are deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if the vessels are owned, directly or indirectly, by a person that is a citizen of the United States under 2 of the Shipping Act, 1916 (46 App. U.S.C 802)

(1) Any vessel constructed under a shipbuilding contract signed on December 21, 1995, and having hull number 3077, 3078, 3079, or 3080.

(2) Any vessel delivered by a shipbuilder, following completion of construction, on or after May 1, 1995, and before January 31, 1996.

(3) Any vessel owned on September 1, 1996, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916, or a replacement for such a vessel.

(4) Any vessel with respect to which payments have been made under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.